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Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States Parties due in 1993

Addendum

COLOMBIA

[14 April 1993]

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I. GENERAL MEASURES OF IMPLEMENTATION

1. The present report provides a description of the general legislative framework that has been developed in Colombia to meet the needs of and to deal with the conflicts that arise in the family nucleus, with emphasis on women and children, so as to make the Family Welfare System available as a public service to the people of Colombia who need it most.

2. Attention is drawn to the fact that major legislative initiatives had already been taken at the time of the signing of the Convention on the Rights of the Child. Moreover, during the period of preparation of the draft Convention, other measures took account of the points and proposals made by the Working Group appointed by the United Nations Commission on Human Rights to draw up the text of the Convention. Finally, after Colombia's ratification of the Convention other measures were promulgated with the aim of strengthening and supplementing the existing legislation.

A. The background to the Convention

3. Act No. 75 of 1968 established the Colombian Family Welfare Institute (ICBF) which combined services for the care and protection of minors and of the family that had previously been dispersed among various other bodies. Ten years later Act No. 7a of 1979 established the National Family Welfare System, through which basic principles were developed for the protection of children and the harmonious integration and development of the family. The ICBF is the body responsible for coordination of this System.

4. The year 1989 saw the promulgation of the Minors' Code, which was introduced more or less in parallel with the activities of the Working Group that was then finalising the preparation of the text of the Convention on the Rights of the Child. Colombia was thus acting in advance of the promulgation of the Convention by the United Nations. This Code defines the fundamental rights of the child in Colombia and the actions and measures that must be taken by the various authorities to deal with irregular situations in which minors may find themselves. The final step in this process of recognition, defence and promotion of the rights of the child, was the signature, on 20 November 1989, of the Convention adopted by the United Nations. The Convention was incorporated in Colombia's internal law by Act No. 12 of January 1991 (see Annex No. 1, the Political Constitution of 1991 and Annex No. 2, the Minors' Code).

5. The same year saw the establishment of the Office of the Procurator for the Protection of Minors and the Family, which is responsible for ensuring compliance with the rules to be observed by authorities charged with protection of minors and the family, such as the family comisarías, family magistrates and the defensores de minores (official guardians of minors).

6. On 30 September 1990 President César Gaviria Trujillo signed the World Declaration on the Survival, Protection and Development of Children, thus committing Colombia to implement the Plan of Action for Implementing the World Declaration. The purpose of this Plan is to improve the living conditions of children and young people and to develop at the world level, during the

1990s, a new ethic for the benefit of children. The various recommendations contained in the Plan of Action include the following:

> "All governments are urged to prepare, before the end of 1991, national programmes of action to implement the commitments undertaken in the World Summit Declaration and this Plan of Action. National governments should encourage and assist provincial and local governments, as well as NGOs, the private sector and civic groups to prepare their own programmes of action to help to implement the goals and objectives included in the Declaration and this Plan of Action;".

7. In July 1991 the National Constituent Assembly recognised the rights of the child in the new Constitution, thus giving greater juridical strength to the institutional developments already carried out. Furthermore, the Office of the Ombudsman, provided for in the Constitution, began to function and an official was appointed with responsibility for protection of the rights of the child.

B. Coordination methods and machinery

8. On the basis of the legislative framework described above, specific types of action were taken for the purpose of fulfilling Colombia's international commitments and continuing, by means of the new machinery, the family welfare activities previously carried out under the structure developed in earlier years. The following paragraphs describe the most important measures taken by Colombia in order to harmonize achievement of the country's principal objectives in regard to the protection of children.

9. Decree No. 1310, issued in 1990, established the Inter-Agency Committee for the Defence, Protection and Promotion of the Human Rights of Children and Young People and President Gaviria, under the powers conferred upon him, also established, on 7 August 1990, the Office of the Presidential Adviser (now President's Programme) for Youth, Women and the Family. Annex No. 3.

10. The Government submitted to the National Council for Economic and Social Policy (CONPES), the supreme national planning body, for consideration and approval, the Plan of Action for Children, 1991-1994 (Bogota, 24 September 1991. Document DNP-2550-UDS-DIPSE), whose target population was children below the age of seven years. Annex No. 4.

11. This technical planning document was supplemented by other CONPES documents of a sectoral character (education, health and drinking water), approved during the course of 1991 and proposing projects directly and immediately related to the targets established by Colombia for the year 2000 and designed to ensure a substantial improvement in the living conditions of children, mothers and young people.

12. The purpose of this Programme of Action in Favour of Children is to define, in a manner consistent with the Government's policies, its international commitments and the rights of the child recognized in the new Colombian

Constitution, the policies and programmes needed in order to provide appropriate care for minors under the age of eighteen.

13. In addition to the preparation of these documents and notwithstanding their importance for planning purposes, it was decided to formulate Specific National Policies for each of the population groups with which the National Programme of Action was concerned, namely: children, young people (particularly those in especially difficult circumstances) and women. All these documents deal specifically with the execution of the various elements contained in the Programme of Action in Favour of Children (PAFI).

14. With regard to the question of juvenile delinquents and offenders, a CONPES document "Servicio de protección y reeducación al Menor Infrantor y Contraventor" has been prepared that contains a full diagnosis of the situation in Colombia in this regard and indicates the investment that will be required in order to deal appropriately with such minors in accordance with the provisions of the Convention on the Rights of the Child.

A specific programme for young people

15. The Government has launched a Presidential Programme for Young People, Women and the Family (PROMOVER), whose aim is to promote the human development of those populations that are most affected by the impact of social and urban processes, changes in the make-up of families and the acts of violence that are occurring in Colombia. Annex No. 5.

16. There has been recognition of the Government's responsibility for providing young people with opportunities in the areas of education, participation and assured income, and encouraging forms of organization and support for youth initiatives.

17. The National Youth Policy covers the following programmes: Human Development; Integration in Economic Life, Participation and Organization; and Strengthening of Institutions for the Protection of Youth.

18. The Plan of Action, as a planning instrument, is being implemented in the context of the Government's Economic Plan, whose main objective is to satisfy the needs of the Colombian population, having regard to the current social situation and the changes which have recently taken place. For purposes of illustration, a description is given below of the main features and central strategies of the Economic and Social Development Plan, 1990-1994, which is known as the Peaceful Revolution.

The main thrusts

20. The main thrust of the new development model is the opening up and internationalization of the economy, together with the dismantling of the excessive State intervention in areas where such intervention is clearly ineffective. In order to open up Colombia's economy the productive sector must carry out a major reconversion of industry and production must be considerably

expanded. This will also necessitate a substantial improvement in human resources.

21. The social policy and the executing agencies for that policy will be of vital importance in this improvement of human resources.

22. In this connection, the social policy is seen, not as a number of benefit payments made for different purposes and administered by feeble institutions, but rather as a set of programmes and activities designed "to strengthen the ability of the population to take advantage of the greater opportunities created by the economic, regional and social programmes undertaken by the Government. The creation of new opportunities and on impetus to the development of human resources are two requirements for balanced national development."

23. The social policy therefore seeks to ensure more extensive and more equitable access by the population to education, health, housing and drinking water. The incentive provided by these tasks constitutes a major step forward in the development of a genuine social infrastructure which will enable Colombia to invest in its people, to reduce inequality and to enable the people to broaden their economy and strengthen peace.

The strategies adopted

24. Public efforts and resources are being focused on those basic tasks which have the greatest impact and multiplier effect for the population groups whose basic needs are unsatisfied. The areas that are receiving priority attention are basic education, primary health care, child nutrition, social housing and the supply of drinking water. These are precisely the areas targeted by the National Programme of Action for Children.

25. Colombia's social policy addresses the entire population of the country, but the groups with the greatest needs are being given priority attention. Machinery has accordingly been developed to focus social outlay by identifying the most depressed social groups and areas and the members of these groups and residents of such areas who are most vulnerable. It is recognized that the most vulnerable are children, young people and women in the disadvantaged areas in towns and in the countryside.

26. To achieve greater efficiency in implementing the social policy, it is essential to modernise the social administration and to give greater efficiency to the agencies - national, regional and local - which have responsibility for carrying out social programmes and projects.

27. The private and non-governmental sector will be encouraged to participate in tasks which have been performed mainly, but not exclusively, by the State. This will result in increased competition between the public sector and the private sector and the governmental and the non-governmental. State action will thus be made more effective and this will produce greater benefits for the most needy groups.

28. Social programmes and projects had previously concentrated on the provision of services, on the assumption that a satisfactory supply of services would meet the demand for services. However, this led to inequalities because it was often the sectors with the least need which benefited. An important alteration has now been made in the social policy. It consists in using direct subsidization of demand as the main instrument or, in other words, identifying those who genuinely need assistance and granting it to them so as to ensure a more equitable balancing of supply and demand.

29. Encouragement will be given to the participation of communities in programmes and projects that will have an immediate and direct effect on them. The excessive intervention and assistance which characterized many of the public programmes will be replaced by greater consultation among public entities at the national and local level, the private sector and community organizations that can participate in all the phases of a given programme.

30. As already indicated, the above-mentioned plans take account of the characteristics of what has been termed the new Colombia, by which we mean the profound economic, social and political transformations that are affecting development and influencing the present and future situation of children. The most important of these transformations are the following:

(a) Colombia is a country in process of demographic change, which means that during the present decade the rates of population growth will continue to decrease, owing to birth control and the decline in infant mortality. Furthermore, improved living conditions have resulted, inter alia, in a steady increase in life expectancy, while the fertility rate has decreased, thus altering the position of women in society. Colombia is increasingly becoming a nation of adults, but one which is providing increasing opportunities for children.

(b) The new Constitution promulgated in July 1991 opened the way for institutional, territorial and political changes. It included extensive and specific references to children as persons having special individual qualities that must be recognized as inalienable rights. The Constitution recognizes the responsibility of the State to guarantee for the entire population access to an appropriate minimum level of education, health, hygiene, drinking water and housing. (articles 49, 51, 67, 357 and 366).

(c) A new relationship is being established in Colombia between the State and society and there is recognition of the major role that can be played by the private sector, the non-governmental organizations and community organizations in the country's development and therefore of the need to eliminate excessive intervention by the State.

(d) Colombia is currently undergoing a process of decentralization in which the agencies of the central government are transferring some of their functions (execution, taxation, etc.) to regional, municipal and local bodies, with the aim of ensuring greater efficiency in public administration.

II. PUBLICIZING THE CONVENTION AND THE PRESENT REPORT

31. Through printed material addressed to various sectors of the population, a publicity campaign has been carried out on the subject of the rights of the child and the new autonomy and development approach which these rights imply. This is a first step in altering widely shared cultural attitudes that, in many cases, benefit from material circumstances.

32. Annex No. 7 includes some examples of this material, which has been prepared in implementation of the following programmes:

(a) The Campaign entitled "No hay derecho pequeño" (There are no small rights);

(b) Material produced by the Office of the Presidential Adviser for Human Rights;

(c) A leaflet entitled "Como Ayudar a los Niños en Dificultad" (How to help children in difficulty) prepared by the Inter-Agency Committee for the Defence, Protection and Promotion of the Rights of Children and Young People, in coordination with the Office of the Ombudsman and the Office of the Presidential Adviser for Human Rights.

(d) A project entitled "Educacion en Derechos Humanos en la Escuela Formal" (Instruction in human rights as part of formal schooling). This project is to be carried out at the municipal level in nine departments of Colombia where different degrees of violence are being experienced, with the aim of establishing a link between schooling and the content and values of human rights.

33. The present initial report will be circulated to agencies directly involved in the work of defence, protection and promotion of the human rights of children, to serve as a useful guide to current activities and to the tasks that must be carried out in the future in order to ensure effective observance of the Convention.

III. DEFINITION OF THE CHILD - MINIMUM AGES FOR CERTAIN PURPOSES

34. Article 28 of Decree-Law 2737 of 1989, the Minors' Code, provides as follows: "The term "Minor" means any person who has not completed his or her eighteenth year". A person attains majority upon completion of his or her eighteenth year, as indicated in Act No. 27 of 1977, which states in article 1: "For all legal purposes, a person is described as having attained his or her majority upon completion of his or her eighteenth year".

35. In all cases where the law makes reference to ability to perform certain juridical acts, or to requirements for achieving capacity to exercise civil rights, this is understood to refer to persons over the age of eighteen years.

Representation of minors

36. Colombian law recognizes the concept of patria potestas or parental authority, the set of legally recognized rights of parents over their unemancipated children, which are designed to facilitate them in fulfilling the obligations imposed upon them by their parental status. Unemancipated children are the children of the family (Colombian Civil Code, article 288).

37. Article 306 of the Civil Code states that judicial representation of a child is the responsibility of either of the parents and that a child of the family may appear as a party to legal proceedings only if authorized or represented by his or her parents. The Defensor de Familia, a public official of the executive branch assigned to the Colombian Family Welfare Institute, acts as the legal representative of minors and defends their interests, even against the parents. In civil proceedings against the child of a family, the party instituting proceedings must address either of the child's parents, who will represent the child in the case.

Extrajudicial representation

38. Extrajudicial representation of unemancipated children is exercised jointly by the father and the mother. In the absence of either one, the right of representation are enjoyed by the other.

Schooling

39. The Colombian Constitution of 1991 states in article 67, paragraph 3, that: "The State, society and the family are responsible for education, which shall be compulsory for children between the ages of five and fifteen years and shall include at least one year of pre-school education and nine years of basic education". Furthermore, Decree No. 2737 of 1989 provides in articles 7 and 311 that:

> "Every minor shall have the right to receive the education that is necessary for his or her full training. This education shall be compulsory up to the ninth grade of basic education and shall be free when provided by the State".

40. There is no age limit for the completion of compulsory schooling. Colombia has programmes for all ages, including programmes for adults.

Medical care

41. With regard to medical care, the Minors' Code specifies, with reference to medical care for minors, in its articles 33 and 34, that the directors of public and private hospitals and other medical centres have an obligation to report any abandoned minors whom they receive or who are admitted with visible signs of ill-treatment, and to place such minors at the disposal of the Defensor de Familia concerned.

42. Public and private hospitals are required to provide the emergency medical care which a minor may need. They may not deny such care on any ground, including absence of the minor's legal representatives, insufficiency of financial resources and lack of space. There have been serious structural difficulties in meeting this formal requirement, owing to the deficiencies of the country's hospital system but, as indicated in the description of the Economic Plan, efforts are being made to deal with and correct these deficiencies in order to achieve the desired aim.

Employment

43. Decree No. 2737 of 1989, Colombia's Minors' Code, deals in its articles 237 to 264 with the question of minors working in circumstances that are not authorized by law. It states that work by minors under the age of fourteen is prohibited and requires the parents to arrange for them to attend education centres. Exceptionally, and in special circumstances defined by the Defensor de Familia, children over the age of twelve years may be allowed to work by the labour inspector or, in his absence, by the senior local authority, upon application made by the parents or, in their absence, by the Defensor de Familia.

44. The maximum duration of a minor's working day is governed by rules laid down in article 242, which states:

"1. Minors between the age of 12 and 14 years may work only for a maximum period of four hours per day, at light work.

2. Minors more than 14 years and less than 16 years of age may work only for a maximum of six hours per day.

3. The working day of minors between the ages of 16 and 18 years may not exceed eight hours.

4. Night work by working minors is prohibited. However, minors more than 16 and less than 18 years of age may be authorized to work until 8 p.m. provided this does not affect their regular attendance at a teaching establishment nor cause any damage to their physical or moral health.".

45. Unscrupulous employers frequently attempt to engage male and female children for work at no pay or very low pay in order to make a greater profit. There have been many specific cases of such exploitation of minors. Articles 243 and 244 of the Minors' Code recognize the right of child workers to receive wages proportionate to the number of hours they have worked, social benefits and the other benefits enjoyed by workers over the age of 18 years, such as training.

46. As regards the prohibited forms of work, the following is a listing of those referred to in articles 245 and 246 of the Minors' Code:

"Article 245. Minors may not be employed in the types of work listed hereunder, because they involve a risk of severely endangering their health or physical integrity:

1. Work involving toxic substances or substances harmful to health.

2. Work at abnormal temperatures or in an environment that is contaminated or lacks sufficient ventilation.

3. Mining work of all kinds below ground and work involving harmful agents such as contaminants, thermal disequilibrium, or lack of oxygen owing to oxidation or gasification.

4. Work in which the minor is exposed to noise exceeding 80 decibels.

5. Work involving the handling of radioactive substances, luminescent paint or X-rays or which involves exposure to ultraviolet or infrared radiation or emission of radio waves.

6. All kinds of work involving exposure to high voltage electric currents.

7. Work under water.

8. Work involving the handling of rubbish or any other type of activity where pathogenic, biological agents are generated.

9. Activities involving the handling of explosive, inflammable or caustic substances.

10. Work in coal bunkers or as stoker onboard sea-going vessels.

11. Industrial painting work which involves the use of lead carbonate, lead sulphide or any other product containing these elements.

12. Work on emery polishing machines, tool sharpening machines, high velocity abrasive mill stones and similar occupations.

13. Work in blast furnaces, metal foundries, steel mills, rolling mills, forges and heavy metal presses.

14. Work and operations involving the handling of heavy loads.

15. Work in connection with gear mechanisms, transmission belts, oil, greasing and other work in proximity with heavy or high-speed transmissions.

16. Work on machines for shearing, cutting, or laminating, lathes, drills and stamping presses, and on other specially dangerous machines.

17. Work with glass and pottery, grinding and mixing of raw materials; dry grinding and polishing in glass works, cleaning operations by sand blasting, work in glazing and engraving workshops, work in the ceramics industry.

18. Gas and arc welding work, cutting with oxygen in tanks or confined spaces, on scaffolds or in pre-heated moulds.

19. Work in the production of bricks, piping and the like, hand moulding of bricks, work in brick presses and kilns.

20. Work in operations and/or processes involving high temperatures and high humidity.

21. Work in the metallurgical industry (iron and other metals), in operations and/or processes which release toxic vapours or powders and work in cement plants.

22. Agricultural or agro-industrial activities involving major health risks.

23. Such other types of work as are specified in regulations issued by the Ministry of Labour and Social Security.

"Article 246. Workers under the age of eighteen years are prohibited from performing any work which is injurious to their morality. They are prohibited, in particular, from working in brothels and places of entertainment where alcoholic beverages are consumed. Their employment for the reproduction of pornographic

scenes, violent deaths, the condoning of offences and the like is also prohibited."

47. In the light of the foregoing, a minor working in circumstances not authorized by the law is understood to mean a person under the age of twelve years who is engaged in any type of working occupation and any person who is older but is less than eighteen years of age and who, subject to the exceptions previously listed, engages in work activities expressly prohibited by law.

48. Other information concerning working minors and the State's action in this field will be found in chapter IX (Special Protection Measures, paragraph c (i) which deals with economic exploitation, including child labour).

Consent to marriage

49. This question is dealt with in article 116 of the Colombian Civil Code, which states that: "Persons over the age of 18 years may enter freely into matrimony". Article 117 of the Code goes on to state that minors may not enter into matrimony without the express written permission of their parents or legal representatives.

Sexual consent

50. Protection in this area is provided by the criminal law which classifies those offences that involve indecent acts or assault and infringement of sexual freedom. The law thus contains chapters on rape and sexual acts in which the youthfulness of the victim is a factor in determination of the offence and the severity of the penalty. Causing abortion without consent by a female under the age of 14 years is thus treated as a particularly grave offence and a penalty of imprisonment for three to ten years is specified.

Criminal responsibility

51. The general rule is to consider minors under the age of 18 years as inimputable (Minors' Code, article 165). Thus various measures, differing in degree and nature, are provided in cases where minors have committed acts that are criminally punishable under Colombian law.

52. Article 166 provides that minors between the ages of twelve and eighteen years who commit offences must be assisted during their trial by the Defensor de Familia and by their legal representative, if any.

53. As regards deprivation of freedom, the measures provided for in the Code for offending minors between the ages of twelve and eighteen years that may be applied by the juvenile magistrate or Defensor de Familia must, as far as possible, be carried out in the family environment or within the jurisdiction in which the minor lives. These measures are essentially pedagogic and protective.

54. The measures to be applied in such cases are indicated in article 204 and are listed below:

(a) Warning addressed to the minor and to the persons responsible for him or her.

(b) The imposition of rules of conduct.

(c) Non-custodial supervision.

(d) Placement in an institution.

(e) Any other measure that will contribute to the minor's rehabilitation.

55. Of these measures, only placement in an institution deprives the minor of freedom. It is carried out in closed or semi-closed institutions. In no case may this measure be applied to minors in establishments intended for adults.

Consumption of alcohol and other controlled substances

56. Article 232 of the Minors' Code prohibits the sale of alcoholic beverages to minors and the entry of minors into places of entertainment in which are presented shows that may impair their moral integrity or their physical or mental health.

57. For the purposes of supervision and control of the matters referred to above, the law assigns responsibilities to various national and local bodies such as the ICBF, the Ministry of Justice, the Ministry of Labour and Social Security, the Ministry of Education, the Ministry of Health, the Ministry of the Interior, the family Comisarías, the Minors' Police, the Office of the Procurator for the Protection of Minors and the Family, etc.

58. In concordance with the legislation on narcotics (Act No. 30 of 1986), Title 8 of the Minors' Code provides for legislative, administrative, social and educational measures to protect minors from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances, having regard to the provisions of article 33 of the Convention. Through the Ministry of Education, encouragement has been given to campaigns for preventive action to deal with such situations.

59. The school-age population faces a serious risk of initiation in and dependence on the consumption of psychotropic substances, as has been pointed out in the national survey: "Factores Asociados al Consumo de Sustancias Psicoactivas en Estudiantes de Básica Secundaria y Media Vocacional". It was found in this survey that, for substances such as alcohol, cigarettes, tranquilizers, marijuana, "bazooka" and cocaine, the majority of the consumers

were between the ages of 16 and 18 years. It is estimated that the number of consumers of illicit substances among students is 85,927 for males and 34,863 for females (figures from the first stage of the National Plan for Overcoming the Drug Problem, 1985-1990).

60. The objective of the National Plan for Overcoming the Drug Problem is to prevent the consumption of drugs in educational establishments. It is headed by the directors of schools and colleges, teachers, parents, students and the general community, at the primary and secondary school and higher education levels. The Plan is to be carried out in three stages: 1985-1990, 1991-1996, and 1997-2005. The Plan is financed by contributions from the United Nations Fund and Colombian budgetary funds.

IV. GENERAL PRINCIPLES

61. Article 44 of the Constitution recognizes, in its last paragraph, the higher interest of the child as the fundamental principle of action by the State, the family and the society towards children, in the following terms: "The rights of children take precedence over the rights of other persons".

62. Observance of this principle calls for the adoption, for guidance, of a Constitutional principle providing for prompt action and the right of initiative by citizens so that any person may bring the necessary proceedings before the competent authorities and seek such remedies as are necessary in order to protect and defend children in cases where the enjoyment of their rights is endangered.

63. This principle is also to be found in articles 20 and 22 of the Minors' Code, which provide that public and private bodies concerned with minors' affairs must consider what is in the child's best interests and give it priority over any other consideration. In order to ensure the effectiveness of the measures of protection taken by administrative and judicial authorities, it is provided that if the circumstances so require these authorities may count on the assistance of the police (article 24).

64. The following paragraphs provide a summary of the other provisions contained in Chapter III of the Preliminary Title (articles 18 to 28) of the Minors' Code, entitled "Guiding Principles".

Responsibility of the State

65. Protection of the family, as the nucleus for the development of the family members, and comprehensive care for children under the age of seven years, fundamental aspects of family welfare, are recognized to be an obligation of the State. Complementing this principle is the participation of families and citizens in the execution of programmes undertaken for these purposes (articles 26 and 27).

Limitations on action by the State and the communication media

66. While the State has the responsibility of ensuring that the rights of children are fully realized, its action is limited by other principles such as the best interests of the child and respect for cultural identity.

67. Regarding the first of these principles, it is obvious that the State may not take decisions prejudicial to the full enjoyment by children of their rights. Regarding the second principle, the aim has been to ensure that in dealing with cases involving indigenous minors account is taken, not only of the Code, but also of traditional laws and other practices followed in the various communities. This principle is of particular importance in a country which has 81 different ethnic groups each of which has deeply rooted values and customs (articles 20 and 21).

68. The control exercised over the media of communication seeks to ensure respect for the child's privacy and image. The State, through the competent agencies, imposes limitations designed to ensure that the private environment of children and their family circle is respected (article 25).

69. The rights of the child may not be renounced and the international conventions which Colombia has ratified, as they are interpreted in the Code, take precedence over internal laws. Finally, with the object of guaranteeing the implementation of the Code, its provisions are classified as constituting public policy, which makes them not subject to renunciation, the purpose being to cover situations in which third parties may seek to ignore or obstruct the protection of minors. The primacy of ratified treaties over other laws is a step forward, as the Code constitutes the set of rules with which any law, whether not yet adopted or still in force, must comply.

70. The first part of this report described the principal legal means and coordination measures that exist for meeting the needs of Colombian children. In the following paragraphs we indicate the provisions that reflect and incorporate the general principles of the Convention.

(a) Non-discrimination (article 2 of the Convention)

71. The new Constitution guarantees equal conditions and opportunities for all and recognizes the human rights of all persons, without discrimination, as guiding principles based on justice and reason and on the multi-ethnic and pluricultural characteristics of the Colombian nation (articles 5, 7, 13 and 53).

72. Similarly, the Minors' Code provides as follows:

> "Article 2. The rights set forth in the Constitution, in the present Code and in the other laws and regulations in force shall be recognized for all minors without any discrimination on grounds of race, colour, sex, language, religion, political opinion or other

status, whether of themselves, of their parents or of their legal representatives".

73. As indicated in Colombia's reports concerning the International Convention on the Elimination of all Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid and on the implementation of the Programme of Action for the Second Decade of the Campaign Against Racism and Racial Discrimination, the question of minorities and of enjoyment, without discrimination, of the rights recognized under national law has been given due attention with the aim of finding peaceful and agreed solutions in those cases where conflicts arise or may arise.

74. Children, being a vulnerable sector incapable of itself producing the necessary resources for its defence, are the subject of what is known as "positive discrimination" inasmuch as a special legislative framework has been developed for their benefit that is guided by special principles aimed at balancing their situation vis-à-vis the rest of society.

(b) The best interests of the child

75. Full observance of the principle outlined above, which is recognized both in the Constitution and in the Minors' Code, is rendered difficult by the cultural attitude towards children of both sexes that has prevailed over a long period. Affirmation of the child's right to autonomy and individual development, irrespective of the wishes of his or her parents, relatives, representatives and/or guardians, requires, in considerable sectors of the population, a campaign to make people aware of this question. This has already been undertaken through the information activities already referred to, but it constitutes a long-term challenge because of the cultural aspects involved.

(c) The right to life, survival and development

76. Since the end of the 1960s there has been an improvement in the Colombian population's living conditions which has resulted in a drop in infant mortality, due to the decline in diarrhoeic diseases, respiratory and perinatal infections and malnutrition and the stepping up of vaccination campaigns.

77. The efforts to improve child nutrition have shown encouraging results, but complete success has not yet been achieved. Twenty-five years ago one quarter of the child population showed symptoms of general malnutrition. This proportion has now been reduced to less than half. Both general malnutrition (in relation to weight) and chronic malnutrition (in relation to size) have decreased most in rural areas.

78. In its efforts in this area the Government still faces a challenge that is reflected in the fact that at least 15 per cent of children below the age of five years still show problems of weight below expectations for their age while some 20 per cent are below the expected height. In order to deal with this problem programmes are being carried out to prevent and combat malnutrition. These include the Welfare Homes programme and the Ministry of Health's

Epidemiological Watch System (SISVAN), information on which is included in this report.

79. The relevant article of the Minors' Code reads as follows:

> "Article 4. Every minor has the inherent right to life and the State has an obligation to ensure his or her survival and development".

(d) Respect for the child's opinion

80. This is a something that is not widely recognized in the present Colombian cultural context because children are in many cases not seen as persons capable of interpreting the world and its events on an individual basis and on the basis of their own experience. They tend to be provided with an opinion by their parents, relatives and other adults around them. The awareness creation that must be undertaken to deal with this situation now has a legal basis in the Minors' Code, the relevant provision of which reads as follows:

> "Article 10. All minors have the right freely to express their opinion and to know their rights. Consequently, they shall be heard in any judicial or administrative proceedings affecting them, either directly, or through a representative, in a manner consistent with the rules in force".

V. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality

B. Preservation of identity

81. The Minors' Code states, in the chapter on the rights of minors, that: "Every minor has the right to know who are his or her parents. The State has a corresponding duty to give every opportunity for ensuring a responsible primogeniture.

82. The minor shall be registered after birth and shall have the right to a name and a nationality and to know and be cared for by his or her parents".

83. To ensure realization of these rights, the ICBF, through its Defensores de Familia and in fulfilment of its functions, subpoenas the presumed father to recognize voluntarily a child born outside marriage. It requests entry or correction of the birth date in the civil register in the case of children under the age of 18 years who are in an irregular situation and it initiates proceedings in the family court for the purpose of determining paternity if the father outside marriage refuses to recognize the child voluntarily (Act No. 75 of 1968).

84. Furthermore, Act No. 7a of 1979 assigns to the ICBF the function of "providing expert opinions (anthropological, biological and on matters of heredity) in filiation proceedings", when so ordered by the family court, or upon application by the Defensor de Familia, as a basis for establishing proof in filiation proceedings. Such proof can be obtained by the ICBF only through its Genetics Laboratory. This service is entirely free of charge.

85. National civil registration campaigns have also been organized through the Office of the First Lady and with the participation of all the bodies with responsibility in this area (Central Civil Registry Office, Notaries' Offices, the ICBF and Mayors' Courts).

C. Freedom of expression

D. Access to appropriate information

E. Freedom of thought, conscience and religion

86. Chapter IV made reference to the provisions of the Constitution and the law on respect for the opinion of children as a means of exercising these freedoms. Freedom of thought, conscience and religion may be exercised by a minor under the direction of the parents, in a manner consistent with the child's degree of maturity and evolving capacities. Its exercise may be subject only to such limitations as are prescribed by law and are necessary to protect health, morals and the rights of others (see the definition of the child and the ages a child must have attained for certain purposes) and the regulation of certain activities such as those of the communication media for the purpose of protecting minors' privacy (Minors' Code, articles 11 and 35).

87. The measures concerning the communication media are being taken through the National Television Council, of which the Director General of the ICBF is a member. The ICBF is also responsible for ensuring, through the Defensores de Familia, that the communication media and all citizens see to the observance of the above-mentioned rights.

88. As is mentioned in chapter IX of this report, "Special Protection Measures", there are explicit rules concerning minors who infringe the law. It is necessary to respect their right to be informed regarding the circumstances of their arrest and the execution of any measures taken by the competent administrative and judicial authorities.

89. Regarding freedom of religion and conscience, the Constitution (articles 18 and 19) recognizes for everyone the fundamental right to hold, practise and manifest, both individually and collectively, his religious conviction or belief whatever it may be. Causing a person harm because of these or obliging him to reveal them and compelling anyone to act contrary to them are prohibited. As an affirmative measure supplementing this provision, the Constitution recognizes the equality of all religious faiths and churches before the law. This constitutes a major step forward in the area of coexistence in society.

90. Article 18 of the Constitution refers to freedom of conscience, stating: "No one shall be subjected to harm because of his or her convictions or beliefs, nor compelled to reveal them, nor obliged to act against his or her conscience."

F. Freedom of association and of peaceful assembly

91. The Constitution, in articles 37 and 38, establishes the following rights for all citizens:

> "Any group of people may assemble and demonstrate publicly and peacefully. The cases in which the exercise of this right may be limited shall be expressly determined only by law."

> "The right of free association for the purpose of engaging in various activities which people perform in society is guaranteed."

92. The rights referred to above apply equally to minors.

G. Protection of privacy

93. The Minors' Code (Decree No. 2737 of 1989) refers, in article 25, to the need to respect the privacy of minors and prohibits the communication media from presenting publications, interviews or reports that constitute arbitrary interference in the private life, the family, the home, the acquaintances or the personal circumstances of a minor, or which affect his or her honour or reputation.

94. On this subject the Constitution provides as follows:

> "Article 15. Everyone has the right to personal and family privacy and to his or her good reputation and the State must respect them and ensure that they are respected. Everyone also has the right to be informed of, to bring up to date and to correct any information concerning him or her that has been collected in data banks and archives of public and private bodies...".

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

95. Chapter II of the Minors' Code, which deals with the rights of minors, contains the following article on the above subject:

> "Article 16. Every minor has the right to protection of his or her personal integrity. Consequently he or she may not be subjected to torture, to cruel or degrading treatment or to arbitrary detention.

> A minor who is deprived of his or her freedom shall receive humanitarian treatment, shall be held separately from older offenders and shall have the right to maintain contact with his or her family."

96. As regards penalties for offences and crimes committed by minors, rules have been established whose purpose is expressly to prohibit the use of punishment that is degrading for humans. The Minors' Code deals, in Title V, articles 163 to 219, with the question of minors between the ages of 12 and 18 years who commit or participate in breaches of the criminal law. Chapter I contains general provisions governing procedure; chapter II deals with the conduct of trials and chapter III deals with the measures that may be ordered and their execution.

97. The procedure established for such minors is a tutelary and protection procedure and the measures that may be ordered by the juvenile or family court must be applied within the family circle or within the jurisdiction to which the minor belongs. They must be essentially educational and protective. Placement in an institution must be avoided as far as possible and used only as an ultimate measure after other possibilities have been exhausted in consultation with the minor and his or her family.

98. Children under the age of twelve years who commit breaches of the criminal law must be cared for through the Defensores de Familia of the ICBF, who furnished them the necessary protection.

99. It is in the first instance the family that must implement and ensure the effectiveness of the civil rights and freedoms of minors. The community too must seek to ensure that the rights referred to are respected and, finally, the State, through its agencies, must seek to ensure that the above-mentioned entities fulfil their obligations and, in the event of their failure to do so, must provide protection in their place.

100. By Act No. 70 of 1986, the Colombian State ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whose fundamental purpose is reflected in the Constitution, which provides:

> "Article 12. No one shall be subjected to forced disappearance, torture or cruel, inhuman or degrading treatment or punishment."

101. It is necessary here to draw attention to the fact that the family itself may be the generator of violence that seriously affects the personal integrity of children and women. This intra-family violence, as it is known, cannot be regarded as torture. Nevertheless, its existence and its great importance in the integral development of children cannot be ignored. In view of the critical situation in this regard and as a result of a citizens' initiative, a bill was submitted for consideration by the Chamber of Representatives. Its object is to prevent and punish the commission of acts of this nature. This bill is currently proceeding through the Parliament.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

102. Before dealing with these questions, it may be important to present some general observations concerning the changes which have affected the family as the social nucleus.

103. With regard to the presence of the father, which is the basis for classifying a family as being complete or incomplete, the tendency appears to have been for the number of incomplete families (presence of a head of family but no spouse) to increase, as compared with the complete family (presence of the head of family and a spouse). The role played by the head of family is particularly important in the processes of decision-making, social and cultural reproduction and, particularly, the economic productivity and subsistence of the members of the family.

104. When women play the role of family head a new dynamic is introduced into inter-family relationships and there is a new conception of roles within the family power structure. When a woman becomes the head of family this transforms her responsibilities within the home as she then has to bear a duel burden: the family burden and the economic burden. This situation has resulted in an increasing participation in the labour market by single women who assume the role of head of household but also have to go out to work even though this may affect the protection of her children.

105. According to official figures of the Government Statistics Office (DANE) (Boletín Estadístico, No. 414, September 1987), it is mainly women who head the family in single parent families. Many of them are paid low wages or have no income whatsoever and in many cases women are the only wage earners. Their living conditions are therefore difficult.

106. For these reasons the Government has had to make considerable efforts to provide greater opportunities for Colombian women.

A. Parental guidance

B. Parental responsibilities

107. The Minors' Code provides that minors must be cared for in the first place by their family, relatives, guardians or representatives, but that when these are unable to carry out this obligation the State can assume the responsibility in their place.

108. Volume 1, "Persons", of the Colombian Civil Code deals, in Title XIV with the rules relating to parental authority (articles 288 to 311) and defines the latter as the set of rights accorded by law to parents over the children of the family in order to ensure fulfilment of the obligations imposed on them by their status as parents. The Code also indicates, in Title XII, the mutual rights and obligations of parents and children, such as custody and individual care, the right to visit the child, the obligation of maintenance, to provide education, to punish and correct children, etc. It also mentions, among the duties of

parents, the requirement that they care for their children in such a way as to ensure their proper physical, intellectual, moral and social development.

109. In order to ensure that parents fulfil their obligations satisfactorily and exercise their rights, encouragement is given to preventive and support programmes based on training for family life, schools for parents, strengthening of values, information campaigns on the rights and duties of parents and the publication and dissemination of written, recorded and audiovisual material. Parents are also supported under various agency programmes, such as the Community Welfare Homes, Childrens' Homes, school canteens and nutrition programmes in which children benefit directly from ICBF services while their parents are working during the day, without, however, the ties between the children and their family being loosened. The above-mentioned programmes are carried out with the direct participation of the families and of the local community. Some 4.5 million children are benefitting from these programmes (see Community Welfare Homes in chapter VII, paragraph a, on survival and development).

110. If the parents fail to fulfil their obligations, the ICBF, through the Defensores de Familia, seeks by extrajudicial means to find, together with the family concerned, through conciliation, whether there are any alternative solutions to the difficulties that have arisen. Where agreement cannot be reached, the ICBF, acting in the best interests of the child, initiates civil proceedings by making the necessary applications to the Family Court or Family Counselling Service.

111. Finally, if the parents do not fulfil their obligations or are not able to assume them, the State, acting through the ICBF, acts to protect minors by encouraging, through the ICBF, measures of protection in accordance with the relevant guidelines in Part One of the Minors' Code (articles 29 to 128).

C. Separation from parents

112. Under Colombian law, children have a right to upbringing within a family and may be separated from their family only in special circumstances defined by law and solely for the purpose of protecting them.

113. If they are separated from their parents, children are protected by the ICBF, a body responsible under law for providing, through the Defensor de Familia, protection to minors who are in an irregular situation.

D. Family reunification

114. The question of authorization for minors below the age of 18 years to leave Colombia is dealt with in Title V of the Minors' Code, in articles 337 to 348. The relevant provisions read as follows:

> "Article 338. A minor who is to leave Colombia with one of his parents, or with a person other than his legal representative, must first obtain the authorization of the parent with whom he will not

be travelling or the authorization of his legal representative, in both cases duly authenticated before a notary or consular authority."

"Article 339. The Defensor de Familia shall immediately grant the minor authorization to leave Colombia if the parent who is to leave together with the minor can prove, in relation to the other parent, the existence of any of the following situations:

1. Annulment, divorce or separation where there has been a ruling regarding parental authority in favour of the person who is to travel with the minor.

2. Termination of parental authority.

Paragraph - In cases of adoption the provisions of article 117 of this Code shall apply."

"Article 340. It shall be the responsibility of the Defensor de Familia of the place of residence of the minor to grant authorization for the latter to leave Colombia if the minor has no legal representative; if the whereabouts of the legal representative are unknown; or if the legal representative is not in a position to grant such authorization or is in the situation referred to in article 94 of this Code."

"Article 348. Family magistrates or, failing them, municipal magistrates shall be competent to grant authorizations for minors to leave Colombia if there is disagreement on the matter between the minors' legal representatives or between them and those having custody and exercising personal care, in accordance with the summary proceedings referred to in Decree No. 2282 of 1989."

115. These provisions ensure that minors who leave Colombia do so with the persons authorized to accompany them. Responsibility for the implementation of these provisions is given to the ICBF, the DAS, the Police and the Family Magistrates or Family Counsellors.

116. Furthermore, the ICBF, in consultation with the Ministry of Foreign Affairs, is responsible for the protection of Colombian minors who are abroad, as is indicated in the following provision of the Minors' Code:

"Article 328. Ambassadors and consuls of Colombia accredited abroad shall, on learning of them report to the Colombian Family Welfare Institute cases of Colombian minors held in penal, correctional or protective institutions, whether the minors have or do not have a legal representative, in order that they may be furnished the necessary protection."

E. Recovery of maintenance for the child

117. The Minors' Code recognizes the right of all children, from their conception, to the protection, care and assistance that are necessary to ensure their physical, mental, moral and social development. Accordingly, the provisions and rules of Title III of this Code (articles 129 to 159) serve to give effect to this recognition by conferring on the ICBF's Defensor de Familia, the family commissioner, the family magistrate and the family adviser the power to indicate the amount of the provisional or definitive maintenance payable in respect of the child. In case of failure to pay the specified maintenance, they also have the power to impose fines or to make application to the Defensor de Familia for enforcement action against the debtor unwilling to pay.

118. This ensures that the minor's right is given effect, while at the same time the debtor knows that the maintenance rules have binding force and that if he fails to pay he will have to bear the consequences. He will incur fines or his assets will be attached, seized, valued and auctioned.

119. The bodies empowered by law to act in specific cases see that effect is given to the minor's rights when those having the obligation to pay maintenance fail to do so. In this way the State helps to impose on those responsible for providing maintenance the obligation to do so. If the family or those responsible for the care of the minor do not have sufficient resources, the necessary care is provided by the State, with the help of the family and the community, according to the minor's situation.

120. The ICBF, after verifying the minor's circumstances, may either give advice to those caring for the minor concerning the possibility of applying for maintenance for the minor and initiate the necessary action, or it may put them in contact with programmes operated by the ICBF itself and other public and private agencies for the benefit of minors.

121. Under the criminal law penalties are applicable to those who, without just cause, fail to provide maintenance which the law requires (Penal Code, articles 263 to 265) and article 270 of the Minors' Code provides for a more severe penalty when the offence of failing to provide maintenance is committed against a minor.

F. Children deprived of a family environment

122. This case refers to the first irregular situation provided for in the Minors' Code (articles 30 and 31) and involves any of the following:

(a) abandonment;

(b) temporary or definitive absence of those responsible, in accordance under the law;

(c) the moral or mental incapacity of those responsible;

(d) failure, within a reasonable time, to collect the child from a hospital or other institution to which the child has been admitted;

(e) sexual abuse or physical maltreatment by the parents of the child or those responsible for him or her;

(f) evidence of serious problems of behaviour or social maladjustment;

(g) the existence of serious friction between the parents which threatens the child's mental or physical health.

123. The immediate result in the cases mentioned above is the separation of the minor from his family environment, either because that environment does not really exist or because it is deteriorating. In such cases it is the responsibility of the ICBF, through the Defensor de Familia of the place where the minor is living to declare that the child has been abandoned or is in danger, with a view to the provision of the necessary protection for the child. To this end, the ICBF takes action on its own initiative or at the request of any person reporting the possible existence of such situations.

124. When one of these situations is known to exist, the Defensor de Familia opens an administrative enquiry and initiates the protection procedure. According to his findings he determines what is the most desirable measure to take for the benefit of the minor in the light of the latter's situation. The measures of protection which may be taken, without prejudice to any necessary legal action, include the following:

1. preventive measures or a warning to the parents or to the persons responsible for the child;

2. placement of the child in the custody or in the personal care of the nearest relative who is in a position to assume this responsibility;

3. family placement;

4. full care in a Special Protection Centre;

5. initiation of proceedings for the adoption of the child if the latter has been declared to be abandoned. (This is the sole measure which may not be called for in the order initiating the inquiry);

6. any other measures for the purpose of ensuring that the child is cared for, meeting his or her basic needs or ending the dangers which threaten his or her health or moral upbringing.

125. Family placement (the third measure of protection) consists in placing the child, if abandoned or in danger, with a family which undertakes to give the

child the necessary protection, in lieu of the child's own family. This substitute family must meet certain requirements, namely be able to assume responsibility for the child, provide a suitable home for the necessary period and make regular reports to the Defensor de Familia on the minor's situation (Minors' Code, articles 58 and 76).

126. Comprehensive care of the minor in a Special Protection Centre consists in the Defensor de Familia's placement of the minor who has been abandoned or is in danger in a specialized centre licensed by the ICBF, when no other measure listed above can be applied.

127. By comprehensive care is meant all actions taken for the benefit of minors in an irregular situation that will meet his basic needs and will contribute to his physical and psycho-social development, through a suitable educational environment and with the participation of the family and the community. Such care is provided basically by means of activities organized to replace personal care, schooling, pre-work and work training, special teaching for minors who are physically, emotionally or mentally handicapped, and health care.

128. The following paragraphs describe some of the activities that have been undertaken in this area and are included in the diagnostic section of the "Plan of Action for Children, 1991-1994".

129. The ICBF cares annually for some 27,000 children who are in an endangered situation, of whom 2,500 are reported as abandoned and 3,500 are given in adoption. Abandonment is associated with critical conditions of poverty, situations of intra-family violence, undesired pregnancies and early pregnancies.

130. Of the total number of children receiving care, there are some 7,000 cases of maltreatment and abuse of minors, who are protected through warnings addressed to the parents or to responsible relatives or through the grant of custody to close relatives.

131. The other cases are given other types of care according to their situation. For the provision of direct and immediate care for minors in situations of danger, the ICBF has 227 protection and rehabilitation establishments throughout the country where it dealt with 8,655 minors in 1990. The Substitute Homes care for the children received by the ICBF. They are currently sheltering 8,254 minors.

132. To deal with cases of minors in irregular situations there are 323 family magistrates and 376 Defensores de Familia distributed throughout ICBF's 26 regions.

G. Adoption

133. Adoption is a particularly suitable measure of protection. By this means, under the high supervision of the State, a paternal-filial relationship is

irrevocably established between persons who are not naturally related (Minors' Code, article 88).

134. The adoption programmes comprise all those activities that aim to provide a definitive home for a minor. They include primarily reception and care of the child, the selection of possible adoptive parents and, through special lawyers, the submission of the application for adoption. These programmes may be carried out exclusively by the Colombian Family Welfare Institute and by bodies duly authorized by the latter. In each of the Institute's regions there is an Adoption Committee which carries out the above functions. (See in Annex No. .. a table showing data on minors given for adoption during the years 1991 and 1992, and indicating the nationality of the families concerned and the body responsible for carrying out the procedures prescribed by law).

135. In order to supervise and advise the bodies authorized to carry out the adoption programmes, the ICBF appoints a director to the boards of these bodies who participates in their deliberations with the right to vote. At present only the ICBF itself and eight ICBF-approved institutions are authorized to arrange adoptions in Colombia.

136. The ICBF has the responsibility of strengthening the adoption programme, which seeks to expedite and rationalize the present administrative and judicial procedure in order to increase the number of adoptions and improve the adoption methods. The following actions are being taken to these ends:

(a) Definition of the legal situation of some 17,000 minors who at present benefit from provisional measures of protection.

(b) Regulation of the declaration of abandonment and consent to adoption, in order to give practical affect to the rules of the Minors' Code.

(c) Creation of the conditions and establishing administrative and judicial machinery for reliably determining which minors may be given for adoption. This implies the provision of training for family magistrates and Defensores de Familia and the setting up of inter-disciplinary teams which take action in this area, as provided for in the Minors' Code.

(d) Caring for minors who are exposed to risk by placing them temporarily in substitute homes, friendly homes, protection centres or adoption centres.

(e) Carrying out comprehensive investigations of minors who are candidates for adoption.

(f) Reception and consideration of applications and documents from couples or other persons wishing to adopt.

(g) Initial selection of potential adoptive parents.

(h) Biological, psychological and social investigations of Colombian couples or individuals who are candidates for the adoption of children; these have priority over foreign applicants.

(i) The Defensor de Familia has administrative competence to declare a minor abandoned and to call for his adoption. He represents, before the family magistrate, the interests of the minor whose adoption is being arranged, until the adoption is decided.

(j) Follow-up of Colombian and foreign adoptions.

(k) Recording of the statistical trends of adoption in Colombia.

(l) Dissemination of information concerning the adoption programme within Colombia and abroad and development among Colombians of an interest in adopting abandoned children.

COMPARATIVE SUMMARY
MINORS GIVEN FOR ADOPTION
1991 AND 1992

INSTITUTIONS	FAMILIES				TOTAL	
	COLOMBIAN		FOREIGN		MINORS	%
1991	MINORS	%	MINORS	%		
I.C.B.F.	529	27	1397	73	1926	6
ADOPTION HOMES	77	8	890	92	967	33
TOTAL 1991	606	21	2287	79	2893	100
1992						
I.C.B.F.	524	32	1130	68	1654	62
ADOPTION HOMES	72	7	960	93	1032	38
TOTAL 1992 (Oct)	596	22	2090	78	2686	100
TOTAL 91-92	1202	22	4377	78	5579	100
TOTAL I.C.B.F. 1991-1992	1053	29	2527	71	3580	64
TOTAL HOMES 1991-1992	149	7	1850	93	1999	36

H. Illicit transfer and non-return

137. The Colombian government, realizing the importance of preventing the illicit transfer of minors outside the country, has taken, through different State bodies, various types of action to supervise and control the departure of minors from Colombia (see chapter VI, paragraph (d)).

138. The forcible non-return of children may be connected with intra-family and intra-couple problems or with criminal aims such as the exploitation or illegal adoption of children.

139. The practice of begging with the aid of a child is punishable with imprisonment for one to five years and the penalty is increased if the child is below the age of 12 years or has physical or mental deficiencies which tend to produce feelings of pity, repulsion or the like (Minors' Code, article 265).

140. Similarly, anyone who encourages or effects the adoption of a minor without fulfilling the relevant legal requirements, or without having the authorization of the ICBF to carry out adoption programmes, or who engages in irregular practices that are harmful to a minor, is liable to a penalty of imprisonment of from one to five years. This penalty is increased by from one-half to three- quarters if the offence is committed for purposes of gain and if the perpetrator takes advantage of his official status or profession to carry out the offence, in which case he is liable to the further penalty of dismissal from employment and prohibition from practising the profession for a period of five years (Minors' Code, Article 26).

Return of minors

141. In this connection, the Colombian Government signed in 1989 the Inter-American Convention on the International Return of Minors from countries members of OAS. Ratification of this Convention is pending.

142. Furthermore, the Ministry of Foreign Affairs is preparing draft legislation with a view to securing Colombia's accession to the Hague Convention on Civil Aspects of International Child Abduction. The Colombian Government was invited as an observer to the evaluation meeting held in January at the Hague. The Colombian Government was represented at this meeting by the ICBF.

I. Abuse and neglect, including physical and psychological recovery and social reintegration

143. One of the fundamental rights of minors that is recognized by Colombian legislation is protection against all form of abandonment, violence, neglect or other negligent treatment, sexual abuse and exploitation. This protection is guaranteed by the State through the competent bodies (Minors' Code, article 8).

144. The ICBF, in coordination with State and private bodies, has undertaken a number of programmes for minors in irregular situations. These programmes seek

as far as possible not to separate the child from his family environment unless the circumstances make this advisable. Where this is the case he is afforded protection through placement with a family (Substitute Homes and Friendly Homes) while efforts are made, within the child's family, to remedy the situation that made removal of the child necessary. In addition to this child protection, family life training or guidance and treatment programmes are carried out to enable the family to receive the child back under conditions that are favourable for his normal development.

145. Such a service is also provided for minors who are to be adopted, so that they may continue to be in a family environment and that their arrival in the adoptive family will not prove difficult.

146. If the minor's circumstances justify his placement in a Special Protection Centre, he will receive there family-type care, with emphasis on the treatment the minor needs to deal with the situation which led to his removal from his family. Treatment and guidance are given to the family to enable it later to take the minor back.

147. Colombian law has also established criminal penalties for those who abuse or commit offences against the physical or psychological integrity of minors and civil penalties for the parents, even including deprivation of parental authority.

J. Periodic review of placement

148. Through the Defensores de Familia and other officials responsible for the protection of minors, the ICBF is required by law to conduct monthly visits to the institutions and homes where minors have been placed, in order to observe the situation of the minors and to report thereon.

149. As regards minors between the ages of 12 and 18 years who have committed criminal offences, while they are staying in an observation centre or are the subject of institutional placement, the juvenile magistrate or family counsellors ensure that the institution concerned is properly carrying out the measure imposed and must, to this end, must make visits to the institution at least every month. (Minors' Code, articles 84 and 218).

150. In implementation of this rule, the ICBF, through its officials, conducts periodic checks on both the minors concerned and the services being provided, seeing to the welfare of the former and the good organization and efficiency of the latter.

STATISTICS

1. Number of children in homes, with classification by situation:[1/]

Homeless children		16 584
- abandoned minors	5 129	
- minors in danger	10 343	
- minors not yet investigated	1 112	

2. Children adopted in Colombia: total number and breakdown by organizers of adoption:[2/]

	2 686	
- authorized adoption homes		1 032
- Colombian Family Welfare Institute (ICBF)		1 654

3. Children who leave Colombia in conformity with the adoption procedures:[3/] 1 090

4. Children entering the country through adoption procedures[4/]

5.

- Total number of protection institutions receiving funding based on number of places	106
- Total number of places	5 649
- Annual value of the contract	Pesos 1'793 226 550

1/ Figures for the period September 1991 to December 1992. They cover the 26 regions of the Colombian Family Welfare Institute and the programmes of special protection for children in irregular situations or in danger, as defined in the Minors' Code.

2/ Of the total number, 1 336 were girls and 1 353 were boys. See the legal authorization to arrange adoption programmes in Chapter VI, "Family environment and alternative care" (f) "Children deprived of a family environment", item 6.

3/ Figures to December 1992. Thirty-eight per cent of the adoptions were arranged by licensed adoption homes and the remaining 62 per cent by the Colombian Family Welfare Institute. The distribution by country of destination was as follows (absolute figures and percentages):

Children remaining in Colombia	596	22%
United States	407	15%
France	386	14%
Italy	273	10%
Sweden	211	8%
Norway	194	7%
Netherlands	165	6%
Denmark	124	5%

4/ No figures are given because this situation does not occur in Colombia.

6.	- Total number of reeducation institutions receiving funding based on number of places[5/]	43
	- Total number of places	2 675
	- Annual value of contract	Pesos 1'888 771 220
7.	- Total number of rehabilitation institutions receiving funding based on number of places (includes programmes for disabled children) 82	
	- Total number of places	2 528
	- Annual value of contract	Pesos 824 935 560

VII. BASIC HEALTH AND WELFARE

A. Survival and development

B. Health and health services

C. Social security and child care services and facilities

D. Standard of living

151. These four subjects being closely related, the following paragraphs provide a description of the existing governmental programmes for dealing with particular types of care included in the Programme of Action in Favour of Children:

152. The year 1985 saw the launching of a National Plan for the Survival and Development of Children (SUPERVIVIR), whose aim is to control and reduce the principle causes of mortality and morbidity in children under the age of five years, occasioned by perinatal diseases, diarrhoeic illnesses, acute respiratory infection, malnutrition, diseases immunity from which can be obtained, accidents and psychoaffective deprivation.

153. SUPERVIVIR seeks to bring about changes in the behaviour of persons and in their practices, attitudes and knowledge through community education efforts directed towards individual, family and community self-care and the use of appropriate health technologies.

154. The Plan is based on the activities of "health guards", secondary school students (ninth and tenth grades) who make visits to families in order to provide guidance in the basic elements of preventive health education and to help to improve their living conditions. The principal actions they perform are: identifying risks of illnesses covered by the programme, teaching how to

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5/ The agreed number of places refers to a method for provision of ICBF services in which, for each contracted place, non-governmental organizations working with children receive one child for whom they provide basic care in the areas of survival, protection, reeducation and rehabilitation.

prevent them, motivating those they visit and informing them concerning the use of the health services, providing guidance and helping to improve the quality of life of the families visited.

155. For the purpose of general health education, health classes are included in the regular, basic and intermediate vocational curriculum; both teachers and students receive training and they work directly with families as part of their course. In 1990 some 915,000 students were engaged in this programme and 327,000 student "health guards" were trained.

156. The Colombian Family Welfare Institute (ICBF), through the Community Welfare Homes programme cares for 830,700 children in its 55,380 homes. In these homes they receive protection and nutrition which covers approximately 60 per cent of their food requirements. A feature of this programme is the direct participation of parents in caring for the children. Training, equipment and food supplies are provided by the ICBF and other bodies.

157. The 1,167 Childrens' Homes care for 129,000 minors who are the children of working mothers. These homes provide the comprehensive care, stimuli and protection that the children need for their development and the food provided covers approximately 80 per cent of their needs. The Childrens' Homes carry out a programme of "nutritional recovery" which has benefitted 34,560 children either as out patients or in paediatric wards. A total of 685,728 children have also benefitted from the supply of Bienestarina by the National Health Service.[6/]

158. The Family Education for Child Development Programme (PEFADI), directed by the Ministry of Education, the Ministry of Health and the Colombian Family Welfare Institute, is aimed at families in rural areas. It carries out family education activities and identifies basic methods of ensuring the survival and development of children. It covered 300,000 minors between 1987 and 1990. This programme is broad in scope, having regard to the fact that, of the 5.7 million children in Colombia, 2 million lived, in 1985, in rural areas without access to basic care services and with low family incomes.

159. The National Programme of Action in Favour of Children, mentioned in chapter I as one of the existing coordination mechanisms, seeks to raise the level of health of the Colombian population, particularly in the area of meeting unsatisfied basic needs (NBI) and helping the most vulnerable members of the population through health promotion activities, public hygiene and the prevention of diseases. Its general aim is to develop a health culture and to encourage public participation with the aim of improving efficiency, as well as achieving the aims set by the World Summit for Children (see annex No. 4).

6/ Bienestarina is a food of high nutritional value with a formulation that is planned to provide proteins through an appropriate balance of essential amino acids, calories, vitamins and minerals. It is produced by three Colombian plants operated by the Colombian Family Welfare Institute. Their output goes to the beneficiaries of the above-mentioned programmes and to the elderly. It is also available on sale to the public and is used for emergency treatment.

160. The Comprehensive Care Programme for the Under-Sevens aims to prevent anomalies in the growth and development process. The subject population are families living in areas of poverty who make use of ICBF programmes such as the Community Homes and Childrens' Homes. The activities undertaken include assessment of development, family relations and patterns of upbringing, assessment of growth and nutritional condition, physical examinations, dental examinations and family education. In order to extend the coverage and quality of this programme, an inter-agency agreement has been concluded for the coordination of resources.

161. The Expanded Programme of Immunisation against the most common and fatal diseases of childhood, such as measles, diphtheria, whooping cough, tetanus, poliomyelitis and tuberculosis, has saved the lives of many children in Colombia. Universal vaccination and the eradication of poliomyelitis are basic aims of the programme. The challenge for the decade is to secure and extend the results already achieved.

162. The National Plan to Promote, Protect and Support Breast-feeding is working, as part of the infant survival campaign, to revive the practice of breast-feeding by mothers, with the aim of increasing the number of mothers practising breast-feeding exclusively until their children are four months old and to extend breast-feeding, as a supplementary method, until they reach the age of two years. A study of this question has yielded disturbing results, namely that the average duration of breast-feeding is 9.5 months, with variations across the country. In the Atlantic Coast region 50 per cent of children stop breast-feeding at the age of 11 months, whereas in the central region and in Bogotá they stop at the age of 5 months. There is less breast-feeding among mothers who work outside the home.

163. SISVAN, the Epidemiological, Food and Nutrition Monitoring System, was set up in late 1987 for the purpose of detecting malnutrition among children under five years of age and carrying out a follow-up of the measures taken. The System has been operating in 438 municipalities in 29 regions.

164. The Maternal and Perinatal Care Programme seeks to reduce avoidable maternal mortality, to improve the management of institutions providing services to women of child-bearing age, to reduce the number of underweight newborn children and to reduce the number of high-risk pregnancies through training of health teams and midwives. It concerns itself with the financing and equipment of health agencies, the planning of educational material, vaccination of pregnant women against neonatal tetanus and the strengthening of family planning services.

165. The objective of the Programme of Comprehensive Care for Adolescents is to draw the attention of young people between the ages of 10 and 19 years who live in the disadvantaged areas of six major cities (Bogotá, Medellín, Cali, Bucaramanga, Barranquilla and Cartagena) to certain biological, psychological and social topics, giving priority to the areas of reproductive health, growth and development, the psychodynamics of the family, educational problems connected with apprenticeship and sex education for family life.

166. Chapter II, which deals with the minimum ages for certain purposes, refers, in the section on prohibited substances, to the National Plan for

Overcoming the Drug Problem. This is the official programme for countering a problem that affects the normal development of young people of both sexes.

VIII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance

B. Aims of education

167. The right to education is recognized in article 67 of the Constitution, which states:

> "Education is a right of the individual and a public service that performs a social function. Its purpose is to give access to knowledge, science and technology, as well as to other cultural advantages and values. The State, society and the family are responsible for education, which shall be compulsory between the ages of five and fifteen years and shall include at least one year of pre-school education and nine years of basic education."

168. Colombia's primary education system has achieved high levels of school place availability. At present 4.2 million children are enrolled at this level, but total coverage has not yet been achieved. Out of every 100 children of school age, 16 are not attending school. Education is not developing everywhere at the same rate: in the large cities 13 per cent of the children do not attend school, whereas in rural areas the proportion reaches 22 per cent.

169. Quantitative growth has not, however, meant optimization of the internal efficiency of schools and the drop-out rate is still a matter for concern. Furthermore, one third of the school places available are occupied by children who are above the normal age for their class. The great majority of these stay a long time in school because of excessive repeating of grades.

170. Studies of the quality of education draw attention to the limited relevance of curricula, insufficient effective class time for pupils, teachers whose training is not sufficiently related to the curriculum and an absence of linkage between the school, the family and the community.

171. In 1990 secondary education was provided for more than 2.6 million young people, 60 per cent of the places being provided by the public sector and the remaining 40 per cent by the private sector. Although enrolments increased at an annual rate of 3.5 per cent between 1980 and 1984, and 2.2 per cent annually in the last five years, the number of places available continued to be insufficient and constitutes Colombia's most serious educational problem. The secondary level of education reveals problems of repeating of classes, dropping out and over-age students.

172. The paragraphs which follow describe the programmes undertaken to meet the educational needs of the Colombian population.

173. The Plan for the Universalization of Basic Primary Education seeks to cover the entire child population of school age in a manner that will guarantee schooling of better quality. The Plan, lasting for the period 1989 to 1994, is concerned with the more than 4 million children and 114,000 teachers in the 36,000 urban and rural public schools which make up the primary level of education. Implementation of the Plan will call for an outlay of some US$ 180 million from the national budget. The achievements of the Plan to date are as follows:

(a) provision of text books, libraries and teaching materials for some 1.1 million children, 53,400 teachers and 8,400 rural, urban and indigenous population schools;

(b) repair and renovation of 1,855 schools;

(c) recruitment and employment of 4,300 teachers;

(d) training of some 23,000 teachers.

174. The Secondary Education Programme aims to ensure a very considerable increase in the number of places, an improvement in teaching quality and a strengthening of the links between the secondary schools and the vocational training institutions. One of its aims is the creation of 600,000 new student places through expansion of secondary education by the implementation of scholarship programmes. The achievements to date have been as follows:

(a) the award of 45,000 scholarships for 1,215 colleges in 12 major cities;

(b) review of the basic curriculum and the general programme framework;

(c) training of 30,000 teachers in refresher courses;

(d) involvement of 57 schools in projects linking the Ministry of Education with the National Apprenticeship Service (SENA), which is the State body responsible for technical vocational training.

175. The Programme of Ethnoeducation aims to develop teaching and apprenticeship methods that are consistent with the social values of the various ethnic groups in Colombia. The objectives of the Programme are to professionalize the indigenous teachers, to develop model curricula for ethnic groups and to improve the links between the indigenous communities and the other sectors of the population. The following are some achievements of this programme:

(a) work with 1,167 teachers;

(b) formulation of a policy for improving the quality of education among ethnic groups;

(c) development and organization of ethnic educational programmes and projects at the regional and local levels;

(d) evaluation, publication, reproduction, procurement and distribution of teaching materials in native languages and in Spanish.

176. The Special Education Programme was established to extend and improve education for children, young people and adults with physical, mental or emotional disabilities, as well as persons of exceptional ability, by means of strategies for integration, supervision and encouragement. The Programme aims to cover the 33 territorial subdivisions of Colombia and to serve 80,000 children. The Programme's achievements are:

Coverage of 24 of the 33 territorial subdivisions.
The training of 1,500 educators and the teaching of 35,000 children.

177. The Initial Education Programme was established to provide kindergarten classes (grade 0) in all of Colombia's public schools in order to increase the factors contributing to the social integration of children under the age of seven years, in rural and urban areas, particularly where the population is very disadvantaged. The Programme aims to cater for 630,000 six-year-olds by 1995, which will mean covering 95 per cent of this age group. To date, this Programme has achieved the following:

The opening of 451 grade 0 classes, taking 14,000 five-year-olds.
Provision, in some 600 towns, of classes for seven-year-olds that are attended by 2 million children.

C. Leisure, recreation and cultural activities

178. The disorderly urbanization that has taken place in the areas inhabited by poor families has resulted in a scarcity of community space suitable for recreation and the organization of cultural activities for children. In addition, families lack the time to devote attention to their children owing to their increasing participation in the labour market, and because of changes in family composition.

179. In these circumstances, the principal recreational activity of children in urban areas is watching television programmes. They spend 2.1 hours of the 3 hours of free time they have in the day in front of the television screen. At weekends and on holidays they spend 4 of their 7 hours of free time in the same manner. There is thus insufficient time for cultural and sports activities.

180. In order to overcome this problem, the Plan of Action in Favour of Children includes a Programme of Recreation, Culture and Use of Free Time that endeavours to open premises for children in the country's cultural centres, in

municipal public libraries that lack childrens' rooms and in suitable local authority premises. With the support of the NGOs, recreation areas are to be created for children under the age of seven years.

181. The Colombian Institute for Youth and Sports (COLDEPORTES) and the Colombian Cultural Institute (COLCULTURA) are carrying out programmes for male and female children whose implementation will require supplementary resources of Pesos 450 million. The financing will be carried out by COLCULTURA with the help of international technical cooperation funds.

Programme of Coordination with the Non-Governmental Organizations (NGOs)

182. The Plan of Action in Favour of Children recognizes the importance, in Colombia, of the participation of foundations in the various services provided for minors and includes among its activities encouragement of and support for the work of these NGOs as a means of extending the scope of the programmes undertaken.

183. In Colombia there are some 3,000 NGOs working with children in cooperation with local communities. There are plans to carry out a programme of coordination between these bodies and the State bodies involved in caring for minors.

184. The following activities are planned:

- To reach agreement with the NGOs on action to be taken for the benefit of children.

- To define the relationship between the governmental bodies and the NGOs by means of specific contracts for the provision of services. Consideration will be given to the possibility of establishing a counterpart fund.

- To define access criteria in order ensure that the NGOs satisfy minimum quality requirements, so that they can meet the State's needs.

185. An essential element of this process will be the linking of the municipal authorities and their Welfare Secretariats with these consultations with the non-governmental organizations.

186. The total cost of the programme will be Pesos 100 million (Pesos 25 million per year). The funds will be used for coordination and follow-up activities to be carried out by the Office of the Presidential Adviser for Youth, Women and the Family.

IX. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency

Refugee children

187. Colombia has so far had no experience of receiving people as refugees. Consequently there is no information to provide on this subject.

Children in armed conflicts, including physical and psychological recovery and social reintegration

188. As the international community is aware, Colombia has to deal with a situation of violence caused by various factors and by parties who have chosen the course of armed confrontation and terrorism.

189. The child population of Colombia, in the areas of conflict, has not been unaffected by the widespread acts of violence and both male and female children have been killed in assaults on towns and ambushes and as a result of explosions.

190. The government of Colombia, through the Office of the President of the Republic and pursuant to article 46 (provisional) of the Constitution, which is quoted below, has established a Solidarity Fund, the purposes of which include care for the victims of violence.

> "Article 46T. The National Government shall set in operation, for a period of five years, a Social Solidarity and Emergency Fund to be administered by the Office of the President of the Republic. This Fund shall finance projects supporting the most vulnerable sectors of the Colombian population.
>
> The Fund shall also seek to obtain resources through national and international cooperation."

191. On the basis of these provisions of the Constitution, a contract for services was concluded between the Administrative Department of the Office of the President of the Republic and the Colombian National Red Cross Society for the execution of humanitarian assistance work in favour of victims of violence throughout the country.

192. The responsibilities of the Red Cross include: health care, transport within Colombia, temporary financial support for housing and feeding programmes and the training of persons (restoring family links).

193. The foregoing are activities undertaken by the Government to deal with cases in which members of the civilian population, including children, have been

victims of violence that has affected their physical integrity, living conditions, family safety, etc.

B. Children in conflict with the law

194. Some aspects of the general situation in Colombia in this regard are indicated below. The information comes from the document "Servicios de Protección y Reeducación al Menor Infractor y Contraventor" prepared by the National Planning Department. Annex No. 8.

195. The involvement of minors below the age of 18 years in criminal offences and minor offences has increased in recent years. In 1990, 18,640 minors were brought before the courts for such offences. Of these, some 7,000 were between the ages of 16 and 18 years while 11,640 were between 12 and 16 years of age.

196. Of the minors who came before the courts in 1990, some 7,200 (38.8 per cent) were acquitted, 3,036 (16.3 per cent) were placed under observation, 1,600 (8.5 per cent) were released under supervision and 1,396 (7.5 per cent) were sent to reeducation centres.

197. For minors who commit serious or minor offences the Minors' Code provides measures designed to ensure their rehabilitation and their reintegration in the family and the community. The purpose of the new machinery which has been set up is to create a positive social environment that will enable these young people to develop values such as respect for human life, responsibility, integrity, honest and productive labour and enhancement of the human person.

198. Under the above-mentioned Code provisions, minors held in prison quarters were transferred in order to receive care in specialized centres capable of ensuring their reeducation. Legislative Decree No. 2893 of 1990 set 9 December 1991 as the date after which minors accused of offences connected with drug trafficking and terrorism were not to be held in adult prisons.

The administration of juvenile justice

Provisions concerning minors who commit serious offences

199. As was mentioned with reference to section 12, persons under the age of 18 years are considered inimputable under Colombian law. They can be recognized as being the perpetrator or participant in a criminal offence but they are regarded as not having responsibility for their actions. The minor may have committed the unlawful act but he is not guilty of it. The logical consequence of this system is the application of measures instead of penalties.

200. Despite the unity of the concept of the "minor", the Minors' Code recognises three different rules of competence for dealing with such offences.

201. The authority with competence to deal with cases of breaches of the criminal law in which a minor between the ages of 12 and 18 years is involved, either as perpetrator or as participant, is the juvenile court or the mixed court. If the perpetrator or participant is under the age of 12 years, the competent authority is the Defensor de Familia. The latter is also competent to deal with minor offences committed by minors under the age of 18 years.

202. Account is also taken of territorial jurisdiction, i.e. the place where the offence is committed (Minors' Code, article 178). A rule on the attribution of competence provides that, in the case of recidivists, the magistrate who has heard the minor's previous case must also deal with the further offences the minor has committed.

Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

203. Colombian legislation has placed great emphasis on protection of the family and of minors with the establishment of the family courts under Decree No. 2272 of 1989 and the Minors' Code, whose ultimate objective is to secure better living conditions for Colombian families, thus serving to protect minors and to prevent delinquency, factors which are of great social benefit.

204. Institutions such as the ICBF and the National Apprenticeship Service (SENA) and the various regional bodies have the responsibility of co-financing the establishment, organization and operation of the institutions and services needed for the reeducation of offending minors and the execution of measures ordered for them (Minors' Code, article 204, paragraph 2).

205. With a view to ensuring the provision of comprehensive care, the ICBF signed an inter-agency cooperation agreement between the Office of the Attorney-General of the Nation, the Ministries of Health, Education and Labour, the Office of the Presidential Adviser for Women, Young People and the Family, the National Planning Department, SENA and the Directorate General of the Judiciary on the implementation of programmes to provide care for minors who commit serious or minor offences.

206. To provide the reeducation and comprehensive care for minors who commit breaches of the criminal law, as required by the Minors' Code, there are institutions which offer alternatives to home life, schooling, training and recreation. Thus, the centres for reeducation, social integration and rehabilitation provide care, treatment and comprehensive training in those cases where the court has ordered placement in an institution. The regime in these centres or institutions may be open, semi-closed or closed.

207. The following paragraphs describe the type of care provided and the type of regime applied in each of the institutions of this kind.

Centre or institution with open regime

208. These provide a community-oriented service where there is continuing interaction and support between the reeducation centre services and the community services, so that the minors placed in them attend external education, work training and recreation programmes while minors from the community also take part in the centre's programmes.

209. These open-regime institutions require no special physical measures of security or external vigilance, because the minors sent to them by the court as a measure of institutional placement, because of their character, their personality and the circumstances in which the offence was committed, could undergo the measure applied in an open environment but this is not possible because their family environment does not offer the security or meet the requirements for execution of the measure and for their rehabilitation, or because they have no family. The characteristics of these centres are such that they are also able to offer open-regime care to minors for whom the court has ordered such measures as: a warning, enforced rules of conduct or non-custodial supervision.

Centre or institution with closed regime

210. These provide comprehensive care and rehabilitation programmes for minors who are 18 years of age and have committed serious offences, and for whom special physical measures of security and external vigilance are required. Such persons have to be placed in a closed institution if the offence constitutes a breach of the criminal law committed with serious threats or violence against persons, if there is repeated perpetration of criminal offences or if, for no valid reason, a previously imposed measure has not been executed (Minors' Code, article 209). Consequently, as the conduct of such minors presents serious difficulties, they may receive visits from relatives, but are not allowed out on leave, except where judicial authorization for this is given.

211. One of the difficulties encountered in ensuring genuine control of juvenile delinquency is that offending minors come mainly from the sectors defined as being critically poor, where the lack of basic services for survival and dignity leads to greater vulnerability of young people that causes attitudes, norms of behaviour and values which make them become criminal offenders.

212. For this reason the Colombian government has assigned priority to the implementation of social development programmes for improving living conditions among this broad sector of the population, this being deemed to be one of the most effective methods for primary prevention of delinquency.

213. To ensure that each of these institutions possesses the necessary resources for carrying out the different stages of reception, observation and reeducation, the National Planning Department is implementing an "Emergency Plan" whose principal objective is the immediate placement of minors hitherto confined in ordinary prisons and concentration on those regions of Colombia where the problem is most acute.

214. According to calculations by the Department, the following facilities will be required in order to provide suitable care for minors who have committed serious or minor offences: 32 reception centres, 13 observation centres, 8 closed reeducation institutions and 15 open or semi-closed institutions. There is also a requirement for 566 places in the supervised freedom rehabilitation services and 326 places for offenders upon whom rules of conduct have been imposed.

215. To care for the perpetrators of minor offences Colombia will require 24 special protection institutions and 296 places in various educational services for young people requiring such a regime. The total annual cost of operating these institutions and services is estimated at Pesos 6,790 million. Of this amount, 2,800 million is the operating cost of the institutions and services and some 4,000 million is that of the departmental reeducation institutions.

The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment

216. As provided in the Constitution (article 11), Colombia has no death penalty. As far as penalties and the length of sentences are concerned, the Colombian Penal Code establishes the following principal penalties for those convicted: imprisonment, light imprisonment and fine (article 41). In specifying the duration of the maximum penalty, the Code recognizes the prohibition of life imprisonment. The maximum term of imprisonment is 30 years and the maximum term of light imprisonment is 5 years (Penal Code, article 44).

217. Minors have always received special treatment under Colombian criminal law because of their state of psychological immaturity. The various criminal statutes have recognized a certain age below which a minor may not be held guilty and is subject, not to a penalty, but rather to measures of protection or rehabilitation.

Physical and psychological recovery and social reintegration

218. Minors who commit serious offences receive comprehensive care based on analysis of their personal, family and social history, so that the measure applied will be appropriate having regard to the numerous causes of their problems and the development potential of themselves and their families.

219. So that work with minors will be carried out in a desirable, appropriate and coherent fashion, efforts are made to ensure agreement, consultation and coordination among the various government and community bodies, coordination being ensured by the Colombian Family Welfare Institute (food, accommodation, medical care, affection, training, schooling, recreation, guidance and family care).

220. The minor is evaluated periodically in order to determine the follow-up and care he must receive and to plan his departure from the institution. Work with the minor's family also takes place.

221. When the minor is under an open environment regime, i.e. is not separated from his family, he is provided training, recreation, community services and guidance, as well as support for both himself and his family, in order to overcome the difficulties which led to the breach of the law.

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

222. Adoption has been found necessary as an immediate solution to the problem of abandonment of children. This is regulated in the Minors' Code, section five, articles 88 to 128, which establishes the general rules and the procedure to be followed and provides for adoption programmes. Adoption is thus primarily a measure of protection by means of which, under the high supervision of the State, a paternal-filial relationship is established between persons who are not naturally so related. Attention is drawn to the fact that by Act No. 47 of 1987, Colombia approved the "Inter-American Convention on Conflicts of Law concerning the Adoption of Minors".

Economic exploitation, including child labour

223. Exploitation of child labour takes many forms such as child prostitution and the employment of children without recognizing all their labour rights or in occupations that endanger their physical or mental health.

224. A number of international and national instruments exist which are relevant to the implementation of rules and programmes for the elimination of exploitation of minors through their work. These include the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Istitutions and Practices Similar to slavery, the conventions and recommendations of the International Labour Organisation, including Convention No. 138 and Recommendation No. 146, supplementing that Convention, which contains specific provisions to regulate and protect child labour.

225. At the formal level Colombia has internal legislation designed to prevent the exploitation of children. The following are some of the texts concerned:

- Act No. 48 of 29 November 1924 relating to the protection of children. Article 4 of this Act prohibits the employment of children under the age of 14 years in work which endangers their physical or mental health.

- Act No. 20 of 1982 (the Working Minors' Statute) which established the General Directorate for Working Minors. This Act sets the minimum age for entering employment and provides for social benefits, minimum wages and other labour rights. This legislation is the result of recognition of the proportions which child labour has assumed and the conditions in which it is carried out.

- Decree No. 2107 of 3 July 1986, which established the Inter-agency Committee on Child Labour.

- The Minors' Code also contains provisions concerning working minors that are referred to in chapter II of this report which deals with the minimum ages for certain purposes, with particular reference to employment.

226. The ICBF, as the body administering the protection of minors and of the family, provides the leadership for activities undertaken in connection with and for the benefit of working minors. It decides on the action to be taken through coordination and agreement between the various State agencies, directs the provision of protection for minors who have to work for their own subsistence and that of their family and takes measures directly or encourages preventive activities for their benefit.

227. The Ministry of Labour and Social Security has a Working Minors Division (shortly to become a Directorate General of Employment) which is developing a system of comprehensive care that covers activities related to the issuance and enforcement of rules for the protection of minors. To this end agreements have been concluded with some universities that are the executing agencies for projects connected with these activities in favour of minors and their family.

228. The Working Minors Division is faced with the following practical difficulties in implementing the regulations that have been drawn up:

- The system of protection has until now placed emphasis on the granting of authorizations for the entry of minors into the labour force, in compliance with the requirements of the law. What is more serious is the fact that most of the minors are employed in a non-structured productive sector in which the employers are unorganized and there is no organization whatsoever of the workers. Young people are usually engaged for temporary work, in small family enterprises and under very vague contractual terms.

- As a result, there are, for child workers, no institutional structures for participation and tripartite consultation.

- The coverage presently provided needs to be strengthened in terms of specialized personnel (labour inspectors), at both the national and regional levels, for minors receiving work from the Ministry of Labour authorization to work. According to Ministry figures, of those minors who actually apply for work authorization, only 50 per cent return the form completed by the employer, as many of the latter find it inconvenient to make fully legal undertakings in respect of working minors.

Drug abuse

229. Many anti-drug campaigns have been carried out and programmes have been set up by governmental and non-governmental agencies with the aim of preventing drug addiction. Some of these experiments are described below:

- The Zagales Programme (PROZA) is a personalized education service for the prevention of drug addiction that is directed by the Luis Amigó University

and is based on work being done by the Tertiary Capuchin Order for children, adolescents and other young people with problems.

- Work is also being done in Colombia by the Therapeutic Communities Movement among young people and families affected by the drug problem.

- The ICBF has a Documentation and Information Centre on Drug Addiction (CEDA) established under an agreement (Col/85/422 of 16 February 1985) concluded between the Government and UNFDAC. An agreement has also been concluded between the United Nations Fund for Drug Abuse Control, now UNDCP (the United Nations International Drug Control Programme) and the Government of Colombia on support for the National Plan for the Prevention of Drug Addiction, the participants in which include the Ministries of Agriculture, Communications, Education, Health and Justice and the Colombian Family Welfare Institute.

- The ICBF has been carrying out a Community Preventive Care Project (AD/COL/90/620) whose primary purpose is to give impetus, through the existing family care programmes and by means of a community participation strategy, to plans and projects of an educational and information nature for developing alternatives and specialized care, with the aim of reducing the incidence and prevalence of factors associated with the consumption of psychotropic substances and encouraging productive factors at the individual, family and community levels.

- Act No. 30 of 31 January 1986 approving the National Statute on Narcotic Drugs, to be administered by the Ministry of Justice, and its implementation Decree No. 3788 of 31 December 1986.

(iii) Sexual exploitation and sexual abuse

(iv) Other forms of exploitation

The idea of sexual abuse of children or adolescents is commonly met with incredulity and revulsion. In Colombia, however, as in many other countries, sexual abuse of children is occurring with a new and unusual frequency. Although no exact figures are available, it is thought that only one of every ten cases is reported.

It is only the extreme cases that are heard of, others remain within the family, because reporting them may have shaming or legal consequences.

Colombia's criminal law provides for punishment of offences against sexual liberty and decency in Title XI, Chapter I "Violation" (articles 298 to 300), Chapter II "Rape" (articles 301 to 302), Chapter III "Sexual Abuse" (articles 303 to 305), Chapter IV "Provisions Common to the Preceding Chapters" (articles 306 to 307) and Chapter V "Procuring" (articles 308 to 312).

The Minors' Code provides for punishment of exploitation of any kind, if it involves activities that conflict with the law or morality or if the activities are performed in the presence of minors. Such offences are mentioned in articles 265, 267, 320, 322, 323 and 325 of the Code. The question of pornography involving minors is dealt with in Part Three, Titles I and III. Article 31, paragraph 4, of the Code recognizes sexual abuse of a child as a ground for declaring the child to be abandoned or in danger.

The ICBF is currently carrying out, through the various communication media (press radio, television), a vigorous information campaign to publicize its services. Every week, over the national broadcasting network (Radio Cadena Nacional - RCN), professionals in various areas with which the ICBF is concerned give the community their views on legal, nutritional and social aspects of child and family welfare.

230. The difficulty of dealing with cases of sexual abuse is due to the silence accompanying them, because of the parents' and relatives' fear of subjecting children to the legal proceedings required in order to prove the harm done and identify the guilty parties. Officials entrusted with these matters must receive appropriate training in order to deal appropriately with the evidence.

Sale, trafficking and abduction

231. These practices are punishable under the law and their occurrence in Colombia does not reach levels that cause alarm, although in 1991 there were some reports of the sale of children. The ICBF sought the cooperation of the State security agencies in order to further the relevant investigations, but these yielded negative results. However, the ICBF recognises the importance of preventive measures and is conducting, in cooperation with the State security agencies, a vigorous campaign which includes leaflets addressed to parents and the community as a whole outlining minimum rules to ensure the safety of minors and avoid the sale of infants by unscrupulous persons.

232. With regard to trafficking in minors, Colombia approved the International Convention of 30 September 1921 for the suppression of the Trafficking in Women and Children, by adopting Act No. 12 of 1933.

233. The Colombian Penal Code provides, in article 311, for the punishment of trafficking in women and children and for the adoption of special measures to protect minors of both sexes against such offences.

D. Children belonging to a minority or an indigenous group

234. As indicated in chapter IV, "General Principles", of this report, in dealing with matters relating to minors account must be taken of the practices and customs of the social and cultural environment in which the minor usually lives, provided they are not contrary to the law (article 21). Great importance is attached to this guiding principle in dealing with cases of indigenous minors belonging to indigenous communities, when greater care must be taken in applying the law. For this reason, the official concerned has to consult the

Indigenous Affairs Division of the Ministry of the Interior and the traditional authorities of the community concerned.

235. The Minors' Code also establishes special rules relating to indigenous children:

"Article 93. Only minors found abandoned outside their community may be given in adoption. The Division of Indigenous Affairs of the Ministry of the Interior or the body or agency acting on its behalf shall be consulted in connection with such adoptions.

In the event referred to in this article, an attempt shall nevertheless first be made to reintegrate the child into the community, provided he will receive suitable protection there. In the event that the abandonment of the child takes place within the child's community, the latter's practices and customs shall be respected provided they are not prejudicial to the best interests of the child.

"Article 239. The employment of indigenous minors shall be governed by the special legislation applicable to the latter, in the absence of which the Substantive Labour Code and the provisions of this Code shall apply."

For the employment of an indigenous minor, the authorization of the President of the Indigenous Council or of the traditional authority of the community concerned must be obtained.

Where this is not possible, the authorization shall be granted by the Ministry of Labour and Social Security, upon application by the Office of the Commission for Indigenous Affairs of the Ministry of the Interior.

If there is no office of the Ministry of Labour and Social Security nor indigenous authority in the place of employment, the authorization shall be granted by the Office of the Commission for Indigenous Affairs, which shall notify the nearest office of the Ministry ofLabour and Social Security, so that it may take appropriate action."

"Article 311. Every minor shall have the right to receive the education necessary for his or her comprehensive upbringing. When provided by the State, this education is compulsory and free up to the ninth grade of primary schooling.

The parents shall have the right to choose the type of education to be given to their children, in which the principles set out in this Code must be observed.

As a right of minors belonging to indigenous communities, the education which they receive from the State or from private parties must respect their traditions, their language and the rules for protection of their culture in accordance with the legislation applicable to such communities."

236. Furthermore, the indigenous communities of Colombia have won constitutional recognition of their cultural identity. The Constitution provides that Colombia is a multicultural nation to which the ethnic groups contribute not only their heritage, but also their present, so that we thus have a variety of cultural patterns.

237. A fundamental principle recognized in article 7 of the Constitution is that: "The State recognizes and protects the ethnic and cultural diversity of the Colombian nation."

238. As an indication of the attention which has been given to the indigenous family, as an individual and specific entity, the ICBF is promoting the Programme of Comprehensive Care for Indigenous Families, which provides for action in the following fields: support for and strengthening of the internal management of the communities and relevant research as means of avoiding dependence through better knowledge of the methods of participation that will contribute to this end.

239. This project is being carried out in 16 departments covering 90 municipalities and 151 indigenous reserves. In 1991 90,021 persons benefited from this project at a cost of 200 million Pesos. Food aid was provided for 21,930 indigenous persons through projects of the Mother and Child Nutrition Programme and further aid was provided for some 1,500 indigenous schoolchildren and adolescents.

240. In the Department of Cauca, in which 30 per cent of the indigenous population resides, more than 120 hectares have been sown and are yielding a continuous supply of food for 11,000 children in 142 school canteens. An average of 8 tons of beef, 4.5 tons of fish, 2.5 tons of pork and 1.2 tons of poultry meat, etc., is also being produced annually. The ICBF has representatives in 38 of the 57 reserves in the Department of Cauca provides assistance to approximately 36,000 people and covers some 30 per cent of the total indigenous school population in the Department (see Annex No. 9 - Comprehensive Care Provided for Indigenous Communities).

241. The information contained in the present report shows the attention which the Colombian State has given to children through the establishment of a specialized inter-agency network and the development of specific programmes to ensure observance of the international treaties that have been concluded. The Government of Colombia recognizes not only the success which have been achieved but also the many obstacles and impediments to the implementation of these programmes.

[Signature]
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